

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case No.: <b>05-O-05168</b>
	)	
<b>ROBERT EDWARD GLASSER,</b>	)	<b>DECISION AND ORDER SEALING</b>
	)	<b>CERTAIN DOCUMENTS</b>
<b>Member No. 47291,</b>	)	
	)	
<u>A Member of the State Bar.</u>	)	

In 2006, prior to formal disciplinary charges being filed against him, respondent Robert Edward Glasser (respondent) contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist him with his mental health issue, and on October 1, 2006, respondent executed a Participation Plan with the LAP.

On April 26, 2007, a Notice of Disciplinary Charges was filed against respondent in case no. 05-O-05168. This matter was initially assigned to the Honorable Richard A. Honn.

Respondent also sought to participate in the State Bar Court's Alternative Discipline Program (ADP), and on June 5, 2007, Judge Honn filed an order granting respondent's request for referral to the ADP, and this matter was referred to the undersigned judge.

On October 2, 2007, respondent submitted a supplemental declaration<sup>1</sup> establishing a nexus between his mental health issue and his misconduct.

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<sup>1</sup> Respondent had originally submitted a nexus declaration on August 14, 2007.

The parties entered into a Stipulation Re Facts and Conclusions of Law in early November 2007 which was received by the court on November 8, 2007.

On February 14, 2008, the court issued an order formally accepting respondent into the ADP as of February 7, 2008. The court also lodged on February 14, 2008, its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),<sup>2</sup> and the parties' Stipulation Re Facts and Conclusions of Law. The court also issued an order on February 14, 2008, enrolling respondent inactive pursuant to Business and Professions Code section 6233 effective March 14, 2008.

On May 9, 2008, the court filed an amended order enrolling respondent inactive pursuant to Business and Professions Code section 6233. The order clarified that respondent was enrolled as an inactive member of the State Bar effective March 14, 2008, for a period of one year through and including March 13, 2009.

The court lodged an Amended Confidential Statement of Alternative Dispositions and Orders on June 17, 2008.

On March 12, 2009, the court issued an order terminating respondent's inactive enrollment as of March 13, 2009.

On August 11, 2009, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law was filed, and this matter was submitted for decision.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In this one-client matter, respondent stipulated that he willfully violated: (1) rule

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<sup>2</sup> The Contract was executed by respondent and his counsel on February 7, 2008.

4-100(A) of the Rules of Professional Conduct<sup>3</sup> by willfully failing to maintain the balance of funds received for his client's benefit and deposited in a bank account labeled as a client trust account; (2) Business and Professions Code section 6106<sup>4</sup> by willfully committing an act involving dishonesty, moral turpitude or corruption by misappropriating at least \$1,939.19 of his client's funds; and (3) section 6106 by willfully committing an act involving dishonesty, moral turpitude or corruption by knowingly, or as a result of gross negligence, issuing a check from his client trust account when there were insufficient funds in the account.

In mitigation, respondent cooperated with the State Bar and, at the time of this misconduct, respondent was involved in a bitter family dispute over real property.

In aggravation, respondent has a record of two prior impositions of discipline. Effective November 29, 2000, respondent received a six-month stayed suspension and two years' probation with conditions including payment of restitution for charging and/or collecting an illegal fee (violation of rule 4-200). In addition, effective May 3, 2003, respondent received a one-year stayed suspension and three years' probation on conditions including a 30-day actual suspension for: (1) failing to maintain client funds in trust (violation of rule 4-100(A)); (2) paying himself more funds from his client trust account than he was entitled (violation of rule 4-100(A)); and (3) failing to maintain written ledgers of client funds.

The parties' stipulation as to facts and conclusions of law, including the court's order approving the stipulation, is attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulation as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this matter.

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<sup>3</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

<sup>4</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent executed a Participation Plan with the LAP on October 1, 2006. The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health dated July 22, 2009, which reflects that, for at least one year prior to this date, respondent has satisfied the requirements set forth in his LAP Participation Plan and has maintained mental health stability and has successfully participated in the LAP.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required his successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issue which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

### **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain

the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing respondent's brief on the issue of discipline, which was received by the court on December 10, 2007, and the State Bar's brief on the issue of discipline, which was received by the court on December 11, 2007, and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances in this matter, and respondent's supplemental declaration regarding the nexus between his mental health issue and his misconduct, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP.

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. Respondent recommended that he receive a two-year stayed suspension, probation with standard terms and conditions, and a 60-day period of actual suspension. In contrast, the State Bar recommended that respondent be disbarred, even if he successfully completed the ADP. The court also considered standards 1.2, 1.3, 1.4, 1.5, 1.6, 1.7(b), 2.2 and 2.3 and the case law cited in the parties' discipline briefs, including *Waysman v. State Bar* (1986) 41 Cal.3d 452; *Vaughn v. State Bar* (1972) 6 Cal.3d 847; *Giovanazzi v. State Bar* (1980) 28 Cal.3d 465; *In the Matter of Mudge* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 536; *Sternlieb v. State Bar* (1990) 52 Cal.3d 317; *McKnight v. State Bar* (1991) 53 Cal.3d 1025; *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280; and *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP, and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's August 11, 2009 order, the court found that respondent has successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the court's Amended Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

### **RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **ROBERT EDWARD GLASSER**, State Bar Number 47291, be suspended from the practice of law in California for three (3) years, that execution of that period of suspension be stayed, and that he be placed on probation for a period of three (3) years subject to the following conditions:

1. Respondent Robert Edward Glasser is suspended from the practice of law for the first one (1) year of probation<sup>5</sup> (with credit given for one-year of inactive enrollment pursuant to Business and Professions Code section 6233).<sup>6</sup>

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<sup>5</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

<sup>6</sup> On May 9, 2008, the court filed an amended order clarifying that respondent's inactive enrollment pursuant to Business and Professions Code section 6233 was effective March 14, 2008, and was to last for a period of one year, through and including March 13, 2009. It was the court's intention for respondent to remain on inactive status for one full year, the period of suspension which would be recommended to the Supreme Court if respondent successfully completed the ADP. However, the court issued another order on March 12, 2009, mistakenly terminating respondent's inactive enrollment as of March 13, rather than March 14, 2009. As a result of the March 12, 2009, order, respondent was returned to active status effective March 13, rather than March 14, 2009. As such, respondent was on inactive status for 364 days, rather than 365 days that the court had intended. As it was the intention of the court and the parties that respondent be enrolled inactive for a full year, respondent should not now be penalized for the court's error. Accordingly, the court recommends that respondent receive credit for a full year of inactive enrollment pursuant to section 6233.

2. Respondent Robert Edward Glasser must also comply with the following additional conditions of probation:
- a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
  - b. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
  - c. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
  - d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period.  
  
In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;
  - e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;

- f. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session; and
  - g. Respondent must comply with all provisions and conditions of his Participation Agreement/Plan with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP.
3. At the expiration of the period of probation, if Robert Edward Glasser has complied with all conditions of probation, the three (3) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is not recommended that Robert Edward Glasser take and pass the Multistate Professional Responsibility Examination (MPRE) as respondent took and passed the MPRE during his period of participation in the ADP.<sup>7</sup>

### **COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State

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<sup>7</sup> Respondent took and passed the MPRE administered in August 2009.



Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: November \_\_\_\_, 2009

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DONALD F. MILES  
Judge of the State Bar Court